

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE INSTITUTE OF CETACEAN
RESEARCH, a Japanese research
foundation; KYODO SENPAKU
KAISHA, LTD., a Japanese corporation;
TOMOYUKI OGAWA, an individual; and
TOSHIYUKI MIURA, an individual,

Plaintiffs,

v.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit
corporation, and PAUL WATSON, an
individual,

Defendants.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit
corporation,

Counterplaintiff,

v.

THE INSTITUTE OF CETACEAN
RESEARCH, a Japanese research
foundation; KYODO SENPAKU
KAISHA, LTD., a Japanese corporation;
and HIROYUKI KOMURA, an individual,

Counterdefendants.

Case No. C11-2043 JLR

SECOND AMENDED JOINT STATUS
REPORT AND DISCOVERY PLAN

Pursuant to the Court's Order Staying Case (Dkt. No. 181), the parties to this action, by the undersigned counsel, submit this Second Amended Joint Status Report and Discovery Plan.

1. Statement of the Nature of the Case:

PLAINTIFFS' AND DEFENDANTS' RESPONSE:

On December 19, 2014, the Ninth Circuit issued its Opinion on a motion for contempt (9th Cir. Dkt. No. 360) ("Opinion"), holding Defendants in this action (Sea Shepherd Conservation Society ("SSCS") and Paul Watson ("Watson")) and a number of (now former) directors of SSCS ("Directors") in contempt for violations of the injunction it issued December 17, 2012 (9th Cir. Dkt. No. 31) ("Injunction"). The Ninth Circuit issued an order to the Appellate Commissioner to award Plaintiffs their "attorney's fees and costs . . . to compensate the Plaintiffs for bringing and prosecuting this civil contempt proceeding" and to award Plaintiffs "compensation for any actual damages suffered and resources (such as fuel and personnel costs) that were wasted as a result" of the contempt. Order, 9th Cir. Dkt. No. 362, at 1-2.

In its Opinion, the Ninth Circuit also stated:

The Plaintiffs' requests for coercive sanctions and an order to compel compliance should be directed to the district court. Our opinion of February 25, 2013, as amended May 24, 2013, provided that the preliminary injunction "will remain in effect until further order of this court." *Inst. of Cetacean Research*, 725 F.3d at 947. However, we issued our mandate on June 7, 2013, at which time the district court assumed supervision over the Defendants' present compliance with the preliminary injunction. While we retain jurisdiction to order remedial relief for acts of contempt that took place prior to the issuance of our mandate, because these coercive sanctions are forward-looking, we believe that policing the Defendants' continuing compliance with the preliminary injunction is better left to the district court, subject to our review on appeal. This panel retains jurisdiction over all appeals in this case.

Opinion, Dkt. No. 360, at 49.

As a result of this direction from the Ninth Circuit, once the Ninth Circuit issues its mandate, this Court will assume jurisdiction to address Plaintiffs' request for coercive sanctions against Defendants and the Directors. As noted by the Ninth Circuit, Plaintiffs have requested coercive sanctions of "bonded, suspended sanctions in the amount of \$2 million or such amount the court deems appropriate; and . . . an order directing that the Defendants may purge themselves of contempt by seeking in good faith to revoke their grants of property to Sea Shepherd entities." Opinion, Dkt. No. 360, at 48.

However, one or more of the Directors, SSCS, or Watson may file a petition for rehearing en banc in the Ninth Circuit. As a result, the stay should remain in place until the Ninth Circuit issues its mandate. The parties should be directed to file a further status report with this Court ten days after the Ninth Circuit issues its mandate.

2. Alternative Dispute Resolution:

PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons discussed above.

3. Timing of Alternative Dispute Resolution:

PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons discussed above.

4. Deadline for Joinder of Additional Parties or Claims:

PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons discussed above.

5. Proposed Discovery Plan:

A. FRCP 26(f) Conference and Initial Disclosures:

PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons discussed above.

1 **B. Scope of Discovery:**

2 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
3 discussed above.

4 **C. Scope and Limitations of Discovery:**

5 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
6 discussed above.

7 **D. Discovery Management:**

8 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
9 discussed above.

10 **E. Discovery Orders:**

11 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
12 discussed above.

13 **6. Proposed Discovery Deadline:**

14 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
15 discussed above.

16 **7. Trial Before a United States Magistrate Judge:**

17 PLAINTIFFS' AND DEFENDANTS' RESPONSE:

18 The parties do not consent to referring this matter to a Magistrate Judge.

19 **8. Bifurcation of Case:**

20 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
21 discussed above.

22 **9. Dispensing with Pretrial Statements and Orders:**

23 PLAINTIFFS' and DEFENDANTS' RESPONSE:

24 The requirements of Local Civil Rule 16.1 should be observed in this case.

1 **10. Other Suggestions to Shorten or Simplify Case:**

2 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
3 discussed above.

4 **11. Trial:**

5 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
6 discussed above.

7 **12. Jury/Non-Jury:**

8 PLAINTIFFS' RESPONSE: Plaintiffs have not requested a jury trial.
9 DEFENDANTS' RESPONSE: Defendants will seek a jury trial on all issues that
10 can be tried to a jury.

11 **13. Length of Trial:**

12 PLAINTIFFS' AND DEFENDANTS' RESPONSE: Premature for the reasons
13 discussed above.

14 **14. Names, Addresses, and Telephone Numbers of Trial Counsel:**

15 **A. Plaintiffs' Counsel:**

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B. Counsel for Defendant Sea Shepherd Conservation Society:

Defendant Sea Shepherd Conservation Society filed a Stipulation for Withdrawal and Substitution of Counsel on December 24, 2014 (Dkt. No. 202) and a Proposed Order therefor. Substituted counsel are:

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15. Service:

PLAINTIFFS' and DEFENDANTS' RESPONSE: All current parties, other than counterclaim defendant Hiroyuki Komura, have been served.

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1 **16. Scheduling Conference:**

2 PLAINTIFFS' and DEFENDANTS' RESPONSE:

3 Once the Ninth Circuit issues its mandate, the parties request a conference to
4 discuss scheduling in this case. The conference should include counsel for the Directors.

5 DATED this 29th day of December, 2014.

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18 *Of Attorneys for Defendant Paul Watson*

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2014, I electronically filed the foregoing Second Amended Joint Status Report and Discovery Plan with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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